IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5073 OF 1995

1. Maharashtra State Road
Transport Corporation,
Bombay Central,
Bombay 400 008

2. Divisional Controller,
Maharashtra State Road
Transport Corporation
Palghar Division,
Palghar ...Petitioners

Versus

Musa Husan Mulani,
(since deceased through L.Rs.)
1. Smt. Malu Moosa Mulani,
At Post Malani, Tal. Malshiras,
District Solapur

2. Wasim Moosa,

3. Asrif Moosa,

4. Irshad Moosa,

5. Rahim Moosa ...Respondents.

Respondents 2 and 3 are minor,
through their guardian i.e.
Respondent No.1 Malu)

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Mr. G.S. Hegde, counsel for Petitioners
Mr. I.R. Kulkarni, counsel for Respondents.

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CORAM: B. H. MARLAPALLE, J.

DATED OF RESERVING
THE JUDGMENT: 25.01.2005

DATE OF PRONOUNCING
THE JUDGMENT : 25.02.2005

ORAL JUDGMENT:-

1. The petitioner No.1 is the statutory body

established under the provisions of the Maharashtra State Road Transport Corporation Act and the petitioner No.2 is the Divisional Controller under the petitioner No.1 at Palghar Depot. The respondent employee was in the employment of the petitioner Corporation as a Driver. At the relevant time he was attached to the Vasai Depot. On 15.6.1988, when he was driving the bus bearing No.NWQ 6957 going from Vasai to Malvan and at about 11.15 p.m. after passing Khed, he was driving the bus in the ghat sections near village Asurde, the bus met with an accident and in the said accident the bus plunged into the valley and went down about 60 ft. and a woman passenger died and five other passengers sustained injuries. The bus also sustained heavy damages. The Depot Manager - Chiplun Depot, visited the scene of the accident and on the basis of his report, the respondent was charge-sheeted on 10.9.1988 alleging the acts of misconduct under clause 10, 11, 22, 27 and 42 of Schedule A of the Discipline and Appeal Procedure Rules of the Corporation. The Departmental Enquiry was held for the charges levelled against the respondent and he was served with a show cause notice on 25.9.1989 proposing dismissal from service. The respondent on receipt of the said show cause notice approached the Labour Court at Thane and filed complaint (ULP) No. 302 of 1989 which came to be dismissed and he was

awarded the punishment of dismissal from service vide order dated 2.8.1991 but w.e.f. 6.8.1991. Though the respondent had a remedy of departmental appeal, he preferred not to resort to the same and instead he approached the Labour Court at Thane in complaint (ULP) No. 159 of 1991. The said complaint was allowed by the Labour Court vide its judgment and order dated 30.3.1993 by holding that the Corporation had engaged in the acts of Unfair Labour Practice under items 1(a) (b) (d) (f) and (g) of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971. The Labour Court directed to reinstate the employee with full backwages with continuity of service.

2. The Corporation challenged the order of the Labour Court in Revision Application (ULP) No. 30 of 1993 and the same was dismissed vide its judgment and order dated 31.7.1995 by the Industrial Court at Thane. Hence, this petition by the Corporation.

3. Before the Labour Court none of the parties lead evidence and they had filed pursis at Exh.10. The complainant employee had admitted that the enquiry was conducted fairly and properly but disputed the findings of the Enquiry Officer holding him guilty. He had taken a stand that the accident did not take place on account of any negligence or rash driving on his part and on the contrary he was driving the bus

carefully and with control but it was a rainy night, the road was slippery. While he was descending the ghat area, another heavy vehicle coming from the opposite directions flushed the head light dipper and suddenly his vision was affected and therefore, he applied immediate brakes of his vehicle. In the process the vehicle was dragged to the left hand side and it fell in the valley about 50 to 60 ft down from the road. He claimed that the burden of proving that the accident had taken place on account of rash and negligent or careless driving or failure to observe the precautions to be taken while driving in the ghat sections, squarely fell on the Corporation and it failed to discharge the same.

4. On the other hand, the Corporation relied upon the findings recorded by the Enquiry Officer as well as the report submitted by Mr. P.S. Vichare, the Depot Manager at Chiplun. It has also relied upon the technical report submitted by the Mechanical Engineer (Operation) at Ratnagiri dated 16.6.1988 as well as the spot panchanama dated 15.6.1988. The Labour Court considered the Enquiry Officer’s findings and held that there was no evidence in support of the same. It held that none of the passengers survived in the same accident nor the Conductor, who was an employee of the Corporation, was examined as a witness before the Enquiry Officer

to prove the acts of negligence on the part of the driver and there was no direct evidence attributing negligence on the part of the driver.

5. The sole witness Mr. Vichare had reached the spot of accident on the next day i.e. on 16.6.1988 and therefore, he could not be termed as an eye witness so as to rely on his testimony. The said witness had narrated about the accident and the conditions of the bus but the said depositions could not be treated as an evidence to hold that the accident had taken place only because of the negligence or failure to follow the precautions while descending in the ghat sections. The Labour Court accepted the defence of the driver that one vehicle was coming from the opposite direction and which flushed full head light and therefore, he had taken his bus to one side of the road. The Labour Court held that this explanation was required to be accepted by the Enquiry Officer, more so, because there could not be any other evidence in respect of the allegations levelled against the driver when the accident had taken place during the wee hours of 16.6.1988. On the other hand the driver was not expected to adduce evidence in his defence that the accident had not taken place on account of his negligence or rash driving. The Labour Court also did not agree with the reasoning of the Enquiry

officer that when it was rainy night and it was the duty of the driver to drive the bus more cautiously and by following the instructions which were given by the Corporation. No such instructions were placed before the Enquiry Officer and the presumptions of the Enquiry officer that the driver was required to follow such instructions was unsustainable. The Labour Court held that the accident had taken place as it was raining during the night time and when the complainant tried to apply the brake and took some turn towards the left side, the bus plunged into the valley. Just because it was fatal accident, it could not be presumed that the driver was guilty, as per the Labour Court. As the charges levelled against the driver were not proved, his dismissal was untenable and hence, he came to be reinstated with continuity in service and full backwages.

6. In the Revision Application (ULP) No. 30 of 1993, the Industrial Court recorded its approval to the reasonings as well as the findings set out by the Labour Court. Both the courts below further held that the damage caused to the bus could not be attributed to any fault or negligence on the part of the driver.

7. Shri. Hegde, the learned counsel for the petitioner-Corporation submitted that it was not

permissible for the Labour Court to re-appreciate the evidence on record and the panchanama drawn as well as the sketch of the place of accident including the prevailing circumstances duly proved that the accident had taken place solely because of the acts of negligence on the part of the driver while descending in the ghat section and more so, the vehicle was in a high speed contrary to the guide-lines issued by the Corporation. The vehicle coming from the opposite side was noticed by the driver when he was driving his bus in a high speed. If the driver was plying the bus with a moderate speed while descending the ghat section, even if the sudden brakes were applied, the bus could not have lost its track and dragged towards the left hand side. Failure to examine the conductor or any other independent witness or any other passenger could not be the reason to hold that the charges levelled against the driver could not be proved. The preponderance of probabilities went to show that the accident had taken place on account of rash and negligent driving while descending the ghat section on a rainy night. In support of his arguments, he has placed reliance on the decision of this Court in the case of **Maharashtra State Road Transport Corporation Vs. Satish Vasant Sobalkar (Writ petition No. 5621 of 2003 decided on 3.9.2003).**

8. Shri. I. R. Kulkarni, the learned advocate for the respondent, on the other hand has opposed the petition on the ground that the concurrent view taken by the Courts below did not suffer from any errors apparent on the face of the record and, therefore, the order passed by the Labour court does not warrant interference under the supervisory powers of this Court. It was submitted that there was no evidence before the Enquiry Officer except the depositions of Mr. Vichare and his report. In addition, a copy of so called guide-lines issued by the Corporation regarding driving in ghat section was also not placed on record. The onus to prove the charges levelled against the driver squarely fell on the Corporation and it could not discharge the same burden, argued the learned counsel.

9. In the case of **Waryam Singh Vs. Amarnath (1954 SCR 565),** the Supreme Court held that the power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. In **Bhahutmal Raichand Oswal Vs.Laxmibai R. Tarta (Air 1975 SC 1297),** it was held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not

conferred a right of appeal. In the case of **Chandavarkar Sita Ratna Rao Vs. Ashalata S. Gurnam (1986(4) SCC 416),** the Supreme Court held thus:-

> " It is true that in exercise of jurisdiction under Article 227 of the Constitution, the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice.

. In the case of **M/s. Essen Deinki Vs. Rajiv Kumar reported in JT 2002 (8) SC 471,** the Supreme Court

reiterated the powers of the High Court under Article 227 of the Constitution in the following words:-

> " Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. it is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof, or not based on any material whatsoever resulting in manifest injustice, interference under the Article is not called for."

10. The challenge to the concurrent views taken by the Courts below raised in this petition is required to be examined on the touchstone of the legal position as summarised hereinabove. To begin with,

it is required to be examined whether the evidence on record proved the charge of negligent and or rash driving on the part of the respondent driver while he was driving the bus on the fateful night of 15.6.1988 in ghat sections. The Record and proceedings called from the court below has number of documents (43) including the Circulars issued by the petitioner-Corporation. The statements of two passengers viz. Mahadeo Bhikaji Chandurkar and Vinayak Gavde were recorded on 15.6.1988 itself. The said statements are on record but they were not examined before the Enquiry Officer. The spot panchanama carried out on 15.6.1988 is also on record but it was not proved by examining any of the two witnesses thereto. Nevertheless, the report submitted by Mr. Vichare who was examined before the Enquiry Officer and the report submitted by the Mechanical Engineer (Operation) on 16.61988 is also on record. This was also produced before the Enquiry Officer. The sketch of the scene of the accident is attached to the report of Mr. Vichare and it appears that the Mechanical Engineer (Operation) while assessing the damage to the bus and the prevailing circumstances in his report dated 16.6.1988, has considered the said sketch. The width of the tar road was shown to be 23 feet and thereafter, on either side there was a kaccha road of 3 to 6 feet width. When the driver applied the brakes to his bus

the brake marks were seen about 17 feet length along the road. On the left hand of the road there were guard stones grouted and one such stone had come off by the force of the bus and the bus went over it before it plunged into the valley. The entire body of the bus was found completely damaged and a woman passenger who died was thrown out of the window and got crushed beneath the body of the bus. The estimated damage to the bus was about Rs.1,00,000/-. The bus was found in top gear, as per the report submitted by Mechanical Engineer. It did not say that the accident had happened due to brake failures and nor was such a case made by the driver in his defence. These obtaining circumstances, clearly indicated that the bus was descending in the ghat and it was in high speed. Even if there was another vehicle coming from the opposite side with full lights on, there was enough space for it on the right hand side of the driver to pass through because the width of the tar road was found to be 23 feet. The brakes marks spread over at a distance of about 17 feet also indicated that the bus was in a high speed and when the driver could not control the speed, he applied urgent brakes and the bus was dragged to the left hand side and consequently it plunged into the valley. It was a rainy night and the time was past 2.00 p.m.. There could be no doubt that the driver had not taken due precautions while descending the

ghat section and he was driving the bus in the top gear and at a speed higher than permissible in the ghat section. The conductor of the bus, as it appears from the record, was daily wager and it may be possible that he was not in the employment of the Corporation at the relevant time when the enquiry was conducted or he not being a regular employee his attendance could not be enforced during the enquiry proceedings. As held in the case of **State of Haryana & Anr. vs. Rattan Singh (AIR 1977 SC 1512)**, the failure to examine any passengers would not be a reason to hold that the enquiry was vitiated or there was lack of evidence to prove the charges. Even though in the instant case the statements of two passengers were recorded, the possibilities of Officers finding it difficult to present them before the Enquiry Officer cannot be ruled out and therefore, the charge against the driver was required to be examined on the basis of the prevailing circumstances, which on the basis of the preponderance of probabilities go to show that the defence taken by the driver was unacceptable. If the bus was descending in the ghat, it could be in the first or second gear and definitely not in the top gear. The accident speaks for itself and Mr. Hegde reightly relied upon the principle of *"Res ipsa loquator".* Once the said doctrine is found to be applicable, the burden of proof would shift on the

delinquent. It appears that these circumstances were not at all considered by the Courts below and the approach of accepting the defence of the driver is a serious error warranting interference for correction. My opinion is supported by a recent decision of the Supreme Court in the case of **Cholan Roadways Ltd. Vs. G. Thirugnanasambandam (JT 2005 (1) SC 116).**

11. Shri.Hegde, the learned counsel for the petitioner Corporation also relied upon the decision of this Court in writ petition No. 5621 of 2003 (decided on 3.9.2003) and submitted that once the charges of rash and negligent driving were proved against the driver, the relief of reinstatement cannot be granted. Referring to the past record of service, it was submitted by the learned counsel that the same was far from being satisfactory. On 1.7.1987 the respondent driver was driving the bus and it had met with a minor accident. By an order dated 31.12.1987, he was issued a strict warning. While the disciplinary proceedings were pending in the subject accident dated 15.6.1988, the petitioner was in service and while on duty as a driver on the bus of the Corporation, he committed another major accident on 20.9.1988 and in the said accident again a casualty was reported. The record also indicated that the loss caused to the bus which he was driving on 15.6.1988, was within the range of Rs.1,00,000/-

as was estimated by the Mechanical Engineer (Operations).

12. While granting Rule, this Court had granted interim stay in terms of prayer clause (c), in so far as the order of reinstatement was concerned and in respect of payment of full backwages, the petitioner Corporation was directed to deposit the entire amount payable with the registry of this Court within four weeks, as per the order dated 1.12.1995. Before the said order was passed, the respondent driver expired on 3.11.95. His legal representatives have been brought on record. The Corporation deposited the entire amount i.e. initially an amount of Rs.37,392/- and subsequently an amount of Rs.1,15,608/-. By an order dated 17.4.1998, an amount of Rs.37,392/- was allowed to be withdrawn but subject to the result of the petition.

13. In the case of **Divisional Controller, M.S.R.T.C. Wardha Vs. Dnyaneshwar s/o Kewaji Khole & Anr. (1992 II CLR 773)**, a Division Bench of this Court has dealt with the case of a driver involved in a major accident akin to the present case. The bus had dashed against another stationary bus and after the disciplinary enquiry the driver was dismissed from service. A Single Bench of this Court while exercising the jurisdiction under Article 227 of the

Constitution had set aside the penalty which was imposed adverting, interalia, the possibility that the brakes may have failed and the consequences of a dismissal being economic death for the workmen. The Division Bench did not approve of the order passed by the Single Bench by the following observations;-

> "11. It is true, that the extreme penalty of dismissal from service will visit on the dismissed employee unbearable consequences of economic deprivation and the like. That individual hardship has to be poised against the sufferings of the travelling public at large who use the vehicle or those who use the road and had been victims of such rash and negligent driving of the employee. Unlike a private employer in a smaller non-passenger vehicle, a driver of a stage carriage operated by the State undertaking has a greater responsibility. He is in the enjoyment of advantages and perquisites not ordinarily claimable and available for other employees. Security of service, decent wages, fair treatment and status and respectability attributable to the employment under a State authority - all

> give him greater hold even among the generality of the class of employees. This adds to the more onerous nature of his duty and responsibility. In such a situation, if he mis-behaves and mis-conducts himself and in such manner as to generate an instantaneous revulsion towards his gross negligence, a soft approach cannot be taken by the Constitutional Court."

14. Having regards to the fact that the respondent driver was guilty of rash and negligent driving, in the accident one lady passenger met with an instantaneous death, the damage caused to the bus in the said accident was estimated to be approximately Rs.1,00,000/- and during the pendency of the disciplinary proceedings on account of the said accident occurred on 15.6.1988, the respondent driver committed another serious accident on 20.9.1988, the relief of reinstatement cannot be granted and the order of dismissal in fact deserves to be confirmed. In the accident that the present respondent had committed on 20.9.1988 a cyclist coming from the opposite direction was hit by the bus and he (Bhalchandra Ramchandra Bhandvekar) died, as is clear from the charge-sheet dated 26.12.1988, a copy of

which is available in the record and proceedings. However, on the demise of the respondent-driver, it would not be proper to direct the recovery of the withdrawan amount by his legal representatives. The same applies to the legal benefits they might have received, on account of the order of reinstatement.

15. In the premises, this petition succeeds and the order passed by the Labour Court on 30.1.1993 in Complaint (ULP) No. 159 of 1991 and that of the Industrial Court in Revision Application (ULP) No. 30 of 1993 passed on 31.7.1995 is hereby quashed and set aside. It is declared that by awarding the punishment of dismissal by order dated 3.8.1991, the petitioner Corporation did not engage in any act of unfair labour practice as alleged in the complaint filed before the Labour Court. However, no money recovery shall be ordered by the petitioner Corporation from the legal representatives of the respondent-driver, henceforth, including the amount of Rs.37,392/- already withdrawn from this Court. The Corporation is permitted to withdraw the balance amount lying with the registry with accrued interest thereon, if any.

16. Rule made absolute accordingly with no order as to costs.